

overall balance of rights and obligations;
(b) reviewing the implementation and operation of this Chapter;
(c) reviewing and discussing the issues concerning the effective implementation of Articles 103 and 106;
(d) reporting the outcome of discussions of the Sub-Committee to the Joint Committee; and
(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.

2. The Sub-Committee shall be:

(a) composed of representatives of the Governments, and may invite representatives of relevant entities other than the Governments with the necessary expertise relevant to the issues to be discussed; and

(b) co-chaired by officials of the Governments.

3. The Sub-Committee shall hold its inaugural meeting within one year after this Agreement enters into force. The subsequent meeting of the Sub-Committee shall be held at such frequency as the Countries may agree upon.

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4. The Sub-Committee shall establish a working group on financial services (hereinafter referred to in this Article as "the Working Group"). The details and procedures of the Working Group shall be specified in Annex 5.

Article 111

Review of Commitments

1. The Countries shall review commitments on trade in services with the first review within five years from the date of entry into force of this Agreement, with the aim of improving the overall commitments undertaken by the Countries under this Agreement.

2. In reviewing the commitments in accordance with paragraph 1 of this Article, the Countries shall take into account paragraph 1 of Article IV of the GATS.

Chapter 9

Intellectual Property

Article 112

General Provisions

1. The Countries shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in administration of intellectual property protection system, and provide for measures for the enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Countries are parties.

2. Intellectual property referred to in this Chapter shall mean all categories of intellectual property:

(a) that are subject of Articles 119 through 124;

and/or

(b) that are under the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.

3. The Countries recognise the importance of international agreements which provide for the international standards of protection of intellectual property.

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4. The Countries reaffirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Countries are parties.

Article 113

Definitions

For the purposes of this Chapter:

(a) the term "Nice Agreement" means the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as amended and as may be amended; and

(b) the term "Strasbourg Agreement" means the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended and as may be amended.

Article 114

National Treatment

Each Country shall accord to nationals of the other Country treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5 of the TRIPS Agreement. The obligation under this Article does not apply to the protection of new plant varieties in respect of the measure as set out in the reservation No. 1 of Schedule of Japan in Annex 4.

Note: For the purposes of Articles 114 and 115, "nationals" shall have the same meaning as in the TRIPS Agreement, and "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

Article 115

Most-Favoured-Nation Treatment

Each Country shall accord to nationals of the other Country treatment no less favourable than the treatment it accords to the nationals of a third State with regard to the protection of intellectual property in accordance with Articles 4 and 5 of the TRIPS Agreement. The obligation under this Article does not apply to the protection of new plant varieties in respect of the measure as set out in the reservation No. 1 of Schedule of Japan in Annex 4.

Article 116

Streamlining and Harmonisation of Procedural Matters

1. For the purposes of providing efficient administration of intellectual property protection system, each Country shall take appropriate measures to streamline its administrative procedures concerning intellectual property.
2. Applications for and grants of patents and publications thereof shall be classified in accordance with the international patent classification system established under the Strasbourg Agreement. Applications for registrations of, and registrations of, trademarks for goods and services and publications thereof shall be classified in accordance with the international classification system of goods and services established under the Nice Agreement.

Article 117

Transparency

For the purposes of further promoting transparency in administration of intellectual property protection system, each Country shall, in accordance with its laws and regulations, take appropriate measures to:

- (a) in cases other than those provided for in paragraph (b) of this Article and paragraph 5 of Article 119, publish information on at least grants of patents and registrations of utility models, industrial designs and trademarks, and make available to the public information contained in the dossiers thereof;
- (b) publish information on applications for registrations of, and registrations of, new plant varieties, and make available to the public information contained in the dossiers thereof;
- (c) make available to the public information on applications for the suspension by the competent authorities of the release of goods infringing intellectual property rights as a border measure; and
- (d) make available to the public information on its efforts to provide effective enforcement of intellectual property rights and other information with regard to intellectual property protection system.

Article 118

Promotion of Public Awareness Concerning Protection of Intellectual Property

The Countries shall take necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

Article 119

Patents

1. Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application in accordance with Article 27 of the TRIPS Agreement.
2. Each Country shall ensure that any patent application shall not be rejected solely on the ground that the subject matter claimed in the application is a micro-organism.
3. Each Country shall ensure that any applicant for a patent application may file a request to the competent authority that his application for a patent be examined, where appropriate, in preference to other applications, subject to reasonable grounds.
4. Each Country shall ensure that an application for a patent is examined upon the request of the applicant, where appropriate, in preference to other applications, if the applicant has filed an application for a patent of the same invention or substantially the same invention in the other Country. Each Country may require the applicant to furnish a result of relevant prior art search or examination result for the invention together with the request.
5. Each Country shall publish patent applications, in accordance with its laws and regulations, after the expiration of a period of 18 months from the filing date or, where priority is claimed, the priority date.

Article 120

Industrial Designs

1. Each Country shall provide for the protection of independently created industrial designs that are new or original in accordance with Article 25 of the TRIPS Agreement.

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2. Each Country shall ensure that a claimed industrial design shall not be new, if it is made available to the public through telecommunication line before the filing date of the application for the registration of industrial design or, where priority is claimed, the priority date of the application, in accordance with its laws and regulations.
3. Each Country shall endeavour to provide that a claimed industrial design shall not be new, if it is publicly known or described in a publication made available to the public in the other Country before the filing date of the application for the registration of industrial design in the former Country or, where priority is claimed, the priority date of the application, in accordance with its laws and regulations.

Article 121

Trademarks for Goods and Services

1. Each Country shall ensure that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent

from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

2. Each Country shall refuse or cancel the registration of a trademark, which is identical or similar to a trademark well-known in either Country as indicating the goods or services of the owner of the well-known trademark, if use of that trademark is for unfair intentions, *inter alia*, intention to gain an unfair profit or intention to cause damage to the owner of the well-known trademark whether or not such use would result in a likelihood of confusion.

Article 122

Copyright and Related Rights

1. Each Country shall provide to authors, performers and producers of phonograms the exclusive right of authorising the making available to the public of their works, performances fixed in phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. Each Country shall provide for appropriate measures concerning limitations on liability for service providers:

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(a) in case where a service provider provides a necessary deterrent to the transmission of information through telecommunication systems or networks controlled or operated by the service provider which it believes to be the infringement of copyright or related rights; and

(b) in case where the infringement of copyright or related rights occurs by the transmission of information through telecommunication systems or networks controlled or operated by a service provider and where the service provider is technically unable to deter the transmission or has difficulty in finding the infringement of copyright or related rights.

3. Each Country shall take necessary measures to promote the development of the collective management organisations for copyright and related rights in that Country.

Article 123

New Plant Varieties

1. The Countries recognise the importance of protecting new plant varieties in a manner consistent with internationally harmonised system. For this purpose, each Country shall ensure that rights relating to new plant varieties are adequately protected.

2. Each Country shall, having due regard to the concerns of the other Country, endeavour to protect as many plant genera or species as possible in a manner stated in paragraph 1 of this Article within the shortest period of

time.

Article 124

Unfair Competition

1. Each Country shall provide for effective protection against unfair competition.

2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following acts of unfair competition, in particular, shall be prohibited:

(a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, the services, or the industrial or commercial activities, of a competitor;

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(b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, the services, or the industrial or commercial activities, of a competitor;

(c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity, of the goods or the services, or the manufacturing process of the goods;

(d) acts of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing goods which imitate the configuration of another person's goods except as provided for in the laws and regulations of each Country; and

(e) acts of acquiring or holding right to use domain names identical with or similar to a specific indication of goods or services of another person, or using the domain name, with intention to gain unfair profit or intention of causing damage to that other person.

3. Each Country shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

4. Each Country shall establish appropriate remedies to prevent or punish acts of unfair competition. In particular, each Country shall ensure that any person that considers its business interests to be affected by an act of unfair competition may bring legal action and request suspension or prevention of the act, destruction of the goods which constitute the act, removal of facilities used for the act, or any damages which result from the act.

Article 125

Enforcement - Border Measures

1. Each Country shall, in accordance with Article 51 of the TRIPS Agreement, provide for procedures concerning the suspension by the competent authorities of the release of goods infringing trademarks or copyrights or related

rights. Each Country may also provide for corresponding procedures concerning the suspension by the competent authorities of the release of goods infringing other intellectual property rights, *inter alia*, patents, utility models, industrial designs or rights relating to new plant varieties.

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2. Where a Country has determined to suspend the release of goods infringing intellectual property rights, the competent authorities of that Country shall inform the right holder of that intellectual property of the names and addresses of the consignor and the importer.

3. Each Country shall ensure that the competent authorities do not allow the re-exportation of the goods infringing trademarks or copyrights or related rights other than in exceptional circumstances.

Article 126

Enforcement - Civil Remedies

Each Country shall ensure that the right holder of intellectual property has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

Article 127

Enforcement - Criminal Remedies

Each Country shall provide for criminal procedures and penalties to be applied in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Each Country shall, to the extent possible, endeavour to provide for criminal procedures and penalties to be applied in cases of wilful infringement of other intellectual property rights on a commercial scale.

Article 128

Co-operation

1. The Countries, recognising the growing importance of protection of intellectual property in pursuing further promotion of trade and investment between the Countries, subject to the availability of funds and the applicable laws and regulations of each Country, shall co-operate in the field of intellectual property. Costs of co-operation under this Article shall be borne in an equitable manner to be mutually agreed upon between the Countries.

2. Areas and forms of co-operation under this Article shall be set forth in the Implementing Agreement.

3. The dispute settlement procedures provided for in Chapter 13 shall not apply to this Article.

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Article 129

Sub-Committee on Intellectual Property

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-

Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 14 shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property protection system, such as:

(i) requirement of attestation or other certification;

(ii) general power of attorney system;

(iii) improvement of administration of modified substantive examination;

(iv) industrial design protection system including deferment of publication; and

(v) multi-class trademark application system;

(c) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.

2. The Sub-Committee shall meet at such venues and times as may be agreed by the Countries.

3. The Sub-Committee shall be:

(a) composed of representatives of the Governments, and may invite representatives of relevant entities other than the Governments with the necessary expertise relevant to the issues to be discussed; and

(b) co-chaired by officials of the Governments.

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Article 130

Security Exceptions

For the purposes of this Chapter, Article 73 of the TRIPS Agreement is incorporated into and forms part of this Agreement, *mutatis mutandis*.

Chapter 10

Controlling Anti-competitive Activities

Article 131

Measures against Anti-competitive Activities

1. Each Country shall, in accordance with its applicable laws and regulations, take measures which it considers appropriate against anti-competitive activities for the efficient functioning of its market.

2. Each Country shall, when necessary, endeavour to review and improve or adopt laws and regulations to effectively control anti-competitive activities.

Article 132

Co-operation on Controlling Anti-competitive Activities